IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR

ORDER

1. ***S.B.CIVIL WRIT PETITION NO.4188/2002.***

Satpal. **VERSUS** State of Raj. & Others.

2. ***S.B.CIVIL WRIT PETITION NO.5754/2000.***

Satpal. **VERSUS** State of Raj. & Others.

11.12.2006.

HON'BLE MR.JUSTICE DALIP SINGH

Mr.Rajesh Kapoor, for the petitioner.
Mr.B.K.Sharma, Deputy Government Advocate.

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These two writ petitions have been filed by the petitioner who was the driver employed with the State of Rajasthan and on account of the fact that he was driving a vehicle owned by the respondent, an accident took place in which the rickshaw puller and a passenger died.

On account of the aforesaid, two separate claim petitions came to be filed and decided by the Motor Accident Claims Tribunal in which awards for compensation were passed by the Tribunal in favour of the claimants.

The aforesaid award, as it appears from Annexure-6, the order of the respondent, came to be challenged before this court by means of appeal filed by the State which came to be decided on 31.08.2000.

Thereafter, the orders Annexure-5 and Annexure-6 came to be passed against the petitioner by the respondents. Vide Annexure-5, the petitioner was

informed that an inquiry under Rule 16 of the CCA Rules, 1958 is proposed to be held and he was asked to appear before the concerned officer on 22.03.2002.

Annexure-6, order dated 15.02.2002, came to be passed wherein the petitioner was informed that in pursuance of the award passed by the Motor Accident Claims Tribunal which was challenged before this Court by means of C.M.A.No.1033/2000 and which has been decided on 31.08.2000, as such, in compliance of the aforesaid order (of this Court) the amount under award was sought to be recovered from the petitioner. It is, these orders (Annexure-5 and Annexure-6) which have been challenged by the petitioner before this court.

This court had vide interim order, stayed the recovery from the petitioner. However, the inquiry in pursuance of the Annexure-5 was conducted against the petitioner and has also been concluded. Hence, so far the relief against the holding of inquiry is concerned, the writ petition has become infructuous.

The learned counsel for the petitioner submits that in the inquiry, no order has been passed for recovering the amount from the petitioner.

The submission of the learned counsel for the petitioner is that before passing the order (Annexure-6) for effecting the recovery, no notice of any proceedings asking the petitioner to show cause was issued by the respondents. It is submitted that the order (Annexure-6) by which the recovery is sought to be made from the petitioner deserves to be set aside primarily on the

ground that the respondents failed to comply with the principles of natural justice, inasmuch as, the petitioner was never afforded any opportunity to show cause against the proposed action of effecting recovery against the petitioner. It is submitted that the petitioner never got an opportunity to explain as to why the recovery should not be made against the petitioner.

The respondents have submitted a reply and *interalia* have submitted that the accident occurred on account of rash and negligent driving of the petitioner/driver, as has been held by the Tribunal. It is submitted that it is on account of the award passed by the Tribunal which has been confirmed by this Court also that recovery is sought to be made against the petitioner.

It is, however, not in dispute that no notice prior to the passing of the order (Annexure-6) for effecting the recovery from the petitioner asking the petitioner to show cause as to why the said recovery should not be made from the salary of the petitioner was given to the petitioner. Nor was any order passed in the disciplinary proceedings under Rule 16 CCA Rules, 1958.

Having heard learned counsel for the parties, I am of the view that in the facts and circumstances, a notice to show cause prior to the passing of the order effecting the recovery of the amount from the salary of the petitioner ought to have been given to the petitioner to explain and to show cause as to why the recovery should not be effected from the salary of the petitioner.

Since the rights of the petitioner are liable to be affected on account of the order (Annexure-6), the petitioner deserves a notice to show cause against the proposed action of recovering the amount from his salary. In that view of the matter, the impugned order effecting the recovery is set aside. In case, the respondents so desire, they may issue a notice to show cause of the proposed recovery to the petitioner before passing any order for effecting the recovery in accordance with law.

Consequently, these writ petitions since they raise identical questions are decided by the common order and the same are allowed. The impugned order passed by the respondents for effecting the recovery are set aside with liberty, as aforesaid.

The writ petitions as well as the stay applications stand disposed of.

(DALIP SINGH),J.

Solanki DS, Jr.P.A.